



CITY OF NEWTON, MASSACHUSETTS

Department of Planning and Development

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Setti D. Warren
Mayor

Public Hearing Date: January 11, 2011
Land Use Action Date: March 22, 2011
Board of Aldermen Action Date: April 4, 2011
90-Day Expiration Date: April 5, 2011

DATE: January 7, 2011

TO: Board of Aldermen

FROM: Candace Havens, Director of Planning and Development
Eve Tapper, Chief Planner for Current Planning ^{ET}
Alexandra Ananth, Senior Planner

SUBJECT: **Petition #351-10, JON B. HOLLINGSWORTH**, for a SPECIAL PERMIT/SITE PLAN APPROVAL to permit a two-story detached garage of more than 700 sq. ft (982 sq. ft.) and allow two dormers to be located two feet from the vertical plane of the side wall of the garage at 373 LEXINGTON STREET, Ward 4, on land known as SBL 41, 17, 12, containing ≈10,030 sq. ft. of land in a district zoned SINGLE RESIDENCE 3. Ref: Sec 30-24, 30-23, 30-15(m)(5)c), (t)(3), (m)(3) of the City of Newton Rev Zoning Ord, 2007.

CC: Mayor Setti D. Warren



The purpose of this memorandum is to provide the Board of Aldermen and the public with technical information and planning analysis which may be useful in the special permit decision making process of the Board of Aldermen. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other

information presented at or after the public hearing that the Land Use Committee of the Board of Aldermen will want to consider in its discussion at a subsequent Working Session.

EXECUTIVE SUMMARY

The subject property is located at 373 Lexington Street and is improved with a legally nonconforming shingled two-family structure circa 1880. In the spring of 2007 the petitioner sought the advice of the Inspectional Services Department as to any restrictions on the construction of a garage for the existing two-family. After consulting with the City's Law Department the Inspectional Services Commissioner informed the petitioner that garages in excess of 700 sq. ft. require a special permit from the Board of Aldermen but they would be allowed to build by-right (without the need for a special permit), either two separate garages (one for each unit up to 700 sq. ft. each), or a larger structure that was both fire-separated and structurally isolated at the center thereby creating separate buildings for purposes of the Building Code.

In June of 2007, the petitioner applied for and received a building permit to construct a detached four-bay garage with a firewall in the middle in order to accommodate parking for the two-family dwelling. The footprint of the permitted garage was approximately 990 square feet, but was broken up in the interior by a firewall with one two-bay garage for each unit. However, the garage that was constructed at the subject property, although in keeping with the character of the existing two-family residence, was not built according to plans associated with the building permit. The petitioner is now seeking to legalize the garage as built, which is noncompliant in a number of respects including:

- The garage does not contain a firewall or structural divide and is therefore larger than the 700 square foot ground floor area allowed for accessory structures. The existing garage is approximately 980 square feet with two bays rather than four and the petitioner must seek a waiver to allow for the oversized garage.
- The garage contains four dormers, two of which are located two feet from the vertical plane of the side wall of the structure where three feet is required per Section 30-15(t). The petitioner must obtain a special permit to legalize these dormers. Although there were no restrictions on the placement of dormers in effect at the time of the issuance of a building permit, submitted plans did not include any dormers. When the City issues a violation for construction not in compliance with approved plans the Inspectional Services Department must enforce the regulation in effect at the time of the violation, which in this case includes Section 30-15(t), "the Dormer Ordinance."
- The height of the garage exceeds the 18-foot limit for accessory structures. Although the petitioners have raised the surrounding grade with gravel in an attempt to bring the height into compliance, a recent survey still shows the height at 20.05 feet. Additionally, based upon the interpretation of the Commissioner of Inspectional Services regarding the correct method to measure a half-story, the second level of the garage has a floor area of more than two-thirds of the floor below (862 square feet). Therefore the building is a two-story structure. Accessory structures are allowed only 1½-stories with no allowance for a special

permit waiver. Therefore, the petitioner must also obtain variances from the Zoning Board of Appeals to legalize the existing two-story structure of 20.25 feet in height.

It should be noted that the petitioner states that he submitted revised plans of the “as built” garage to the Inspectional Services Department as an amendment to the original plans and believed that no further action was necessary. However, the Inspectional Services Department has no record of receiving revised building plans, nor is there any indication in the permit file that updated plans were submitted. As part of a court ordered settlement agreement between the petitioner and the City executed on August 19, 2010, the petitioner is now seeking to legalize the zoning violations through special permits and variances. If the special permits and/or variances are denied, the petitioner may appeal the decision or must bring the structure into full compliance.

The definition for a half-story in the Newton Zoning Ordinances reads as follows: “A story directly under a sloping roof where the area with a ceiling height of 7’0” or greater is less than 2/3 the area of the story next below.” Submitted plans as well as a physical inspection of the property by the Zoning Enforcement Agent indicate that the petitioner has dropped the 8 ft. ceiling height in portions of the second floor to 6’-11” in order to comply with the half-story calculation. Although the definition does not differentiate between framed and finished ceiling height the intent of the ordinance is to regulate bulk, height, and mass as viewed from the exterior, and the Commissioner of Inspectional Services has determined that dropping the ceiling for compliance violates the half-story definition. Furthermore, the Planning Department questions the intended use of the noncompliant second story. The Planning Department recommends that the upper story be restricted to storage use only.

Although an architecturally attractive structure in keeping with the style of the house, the Planning Department is concerned that legalizing the garage constructed without regard to submitted building permit plans or zoning regulation would be setting a bad precedent. Finally, the Planning Department notes that in addition to the 980 square foot two-car garage, there are five surface parking stalls, three of which could be removed in favor of additional green space.

I. SIGNIFICANT ISSUES FOR CONSIDERATION

When considering this request, the Board should consider whether:

- The oversized garage as constructed is in keeping with the scale of the lot, the existing two-family residence, and other properties in the neighborhood.
- The dormers as constructed on the rear façade of the garage are consistent with and not in derogation of the size, scale and design of other structures in the surrounding neighborhood.
- The use of the garage and second floor space above are usual for garages in single residence districts, and will not adversely affect the neighborhood.

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The property is located in Auburndale in a district zoned Single Residence 3. The neighborhood is comprised of a mix of single- and two-family residences on moderately-sized lots. Approximately half of the surrounding residences have detached garages, although none as large as the petitioner's garage.

B. Site

The 10,030 square foot property is long and narrow, but relatively flat. The lot contains a nicely maintained two-family residence with five surface parking stalls in addition to the 980 square foot garage. It appears the petitioner has recently placed a significant amount of gravel around the garage in an unsuccessful effort to build up the grade and bring the height of the structure into compliance.

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The subject property is and will continue to be a legally nonconforming two-family use. The petitioner is proposing to legalize an oversized two-car garage constructed in violation of submitted building permit plans and zoning regulations. The petitioner must obtain special permits from the Board of Aldermen for the size of the garage and the placement of the dormers. To legalize the height and number of stories the petitioner must obtain variances from the Zoning Board of Appeals.

B. Building and Site Design

The petitioner is not proposing to make any changes to the site or noncompliant building at this time. The Planning Department is concerned that legalizing the garage could be setting an unfortunate precedent. The Planning Department also notes that in addition to the 980 square foot garage, there are five surface parking stalls.

C. Parking and Circulation

The petitioner is not proposing to make any changes to the parking or circulation on-site. However, the Planning Department recommends the petitioners remove three surface parking stalls, which are not required by the Zoning Ordinance and replace them with additional open space.

D. Landscape Screening

The petitioners did not submit a landscape plan and none was required. However, the Planning Department recommends the addition of a few well-placed fast growing trees to help screen the mass of the oversized garage.

IV. TECHNICAL REVIEW

- A. Technical Considerations. The Zoning Review Memorandum, dated November 22, 2010 (*SEE "ATTACHMENT A"*), provides an analysis of the proposal with regards to zoning. The petitioner must seek a special permit for an accessory structure in excess of 700 square feet of ground floor area and for the allowance of two dormers two feet from the vertical plane of the side of the main building. Finally, the petitioner must seek a variance from the Zoning Board of Appeals for the height of the structure and for the number of stories. The petitioner is seeking an appeal, through the Zoning Board of Appeals, the Chief Zoning Code Official's (CZCO) determination that the structure is two-stories rather than 1 ½ stories. However, the Law Department has determined that a decision by the CZCO is not appealable.
- B. Other Reviews. No other reviews were required for this petition. The Engineering Division has reviewed and approved the as-built plans for drainage.

V. ZONING RELIEFS SOUGHT

Based on the completed Zoning Review Memorandum the petitioner is seeking approval through or relief from:

- Section 30-15(m)(5)c), to allow for an accessory structure of 982 square feet of ground floor area
- Section 30-15(t)(3), to build two dormers two feet from the vertical plane of the side wall of the main building
- As noted above, the petitioners must also seek and receive variances from the Zoning Board of Appeals for the height and number of stories or bring the structure into full compliance with state and local zoning and building codes.

VI. PETITIONERS' RESPONSIBILITIES

Although the petition is considered complete at this time the petitioner must file with the Zoning Board of Appeals for necessary variances as well as respond to suggestions made by the Planning Department.

ATTACHMENTS

ATTACHMENT A: Zoning Review Memorandum dated November 22, 2010

ATTACHMENT B: Zoning Map

ATTACHMENT C: Land Use Map

Zoning Review Memorandum

Date: 11/22/10

To: John Lojek, Commissioner of Inspectional Services

Fr: Seth Zeren, Chief Zoning Code Official
Eve Tapper, Chief Planner for Current Planning ET

Cc: Terrence P. Morris, Attorney representing the applicant
Candace Havens, Interim Director of Planning and Development
Ouida Young, Associate City Solicitor

RE: Request to legalize a private garage with a footprint in excess of 700 square feet and two stories, and to locate two dormers within two feet of the building wall

Applicant: Jon B. Hollingsworth	
Site: 373 Lexington Street	SBL: 41017 0012
Zoning: SR3	Lot Area: 10,030 square feet
Current use: Two-family dwelling with detached garage	Proposed use: Two-family dwelling with detached garage

Background:

The property at 373 Lexington is improved with one structure containing two dwelling units and a large, illegally constructed garage currently under enforcement for zoning violations. The two-family dwelling is a legally nonconforming use, as determined by the Commissioner of Inspectional Services in a letter of October 12, 2005. The garage at issue was constructed in 2008 and not built according to the building permits that had been issued. The applicant seeks to legalize the existing noncompliant garage.

The following review is based on plans and materials submitted to date as noted below.

Plans and materials reviewed:

- Site Plan, Essex Engineering: Frank Iebba, Surveyor; dated 8/3/10
- Locus Plan dated 9/9/10
- Floor Plans, Benjamin Abrams, Engineer; undated
 - A-1 Proposed Floor Plans
 - A-2 Proposed Elevations
 - SK-1 Existing Ground Floor Plan
 - SK-2 Existing Upper Floor Plan
 - SK-3 Typical Cross Section
- Deed from Jacobs to Hollingsworth recorded 1/17/06 in Bk 46830, Pg 367

Administrative determinations:

1. The existing accessory structure has a ground floor area of 982 square feet. Accessory buildings are limited to 700 square feet of ground floor area. If the building is a garage the Board of Aldermen may grant a special permit to allow the ground floor area to exceed 700 square feet per §30-15(m)(5)c). Therefore, the applicant must obtain a special permit from the Board of Aldermen per §30-15(m)(5)c) in order to legalize the existing structure.
2. Based on the interpretation of the Commissioner of Inspectional Services as to the correct method to measure a half-story (which calculates the height as the distance to the roof structure for the purposes of calculating floor area) the second level has a floor area of 862 square feet, more than two thirds of the floor below, qualifying the building as a two-story structure. Per Section 30-15(m)(3), accessory structures are allowed only one and one half stories, with no allowance for a special permit waiver. The applicant must obtain a variance from the Zoning Board of Appeals to legalize the existing two-story structure.
3. The existing accessory structure has four dormers, two each on opposite sides of the structure. The width of both dormers on both sides is required to be and is less than fifty percent of the length of the exterior wall below. However, two of the dormers are located two feet from the vertical plane of the side wall of the structure where, per §30-15(t)(3)*, three feet are required. The applicant must obtain a special permit from the Board of Aldermen per §30-15(t)(3)* to legalize these existing dormers.
4. See “Zoning Relief Summary” below:

<i>Zoning Relief Summary</i>		
<i>Ordinance</i>	<i>Accessory Structure</i>	<i>Action Required</i>
§30-15(m)(5)c)	Build an accessory structure of 982 square feet of ground floor area	S.P. per §30-24
§30-15(t)(3)*	Build two dormers two feet from vertical plane of the side wall of the main building	S.P. per §30-24
§30-15(m)(3)	Build a two story accessory structure	Variance from ZBA

* Section 30-15(t)(3) is numbered in Ordinance No. Z-20 as 30-15(t)(c). This appears to be a scrivener's error will be corrected in a future recodification of the Zoning Ordinance.




Attachment "B"

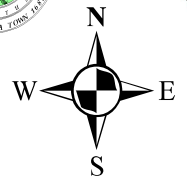
Zoning Map

373 Lexington St.



Legend

-  373 Lexington St.
-  Single Residence 3
-  Building Outlines



The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve applications based solely on GIS data.

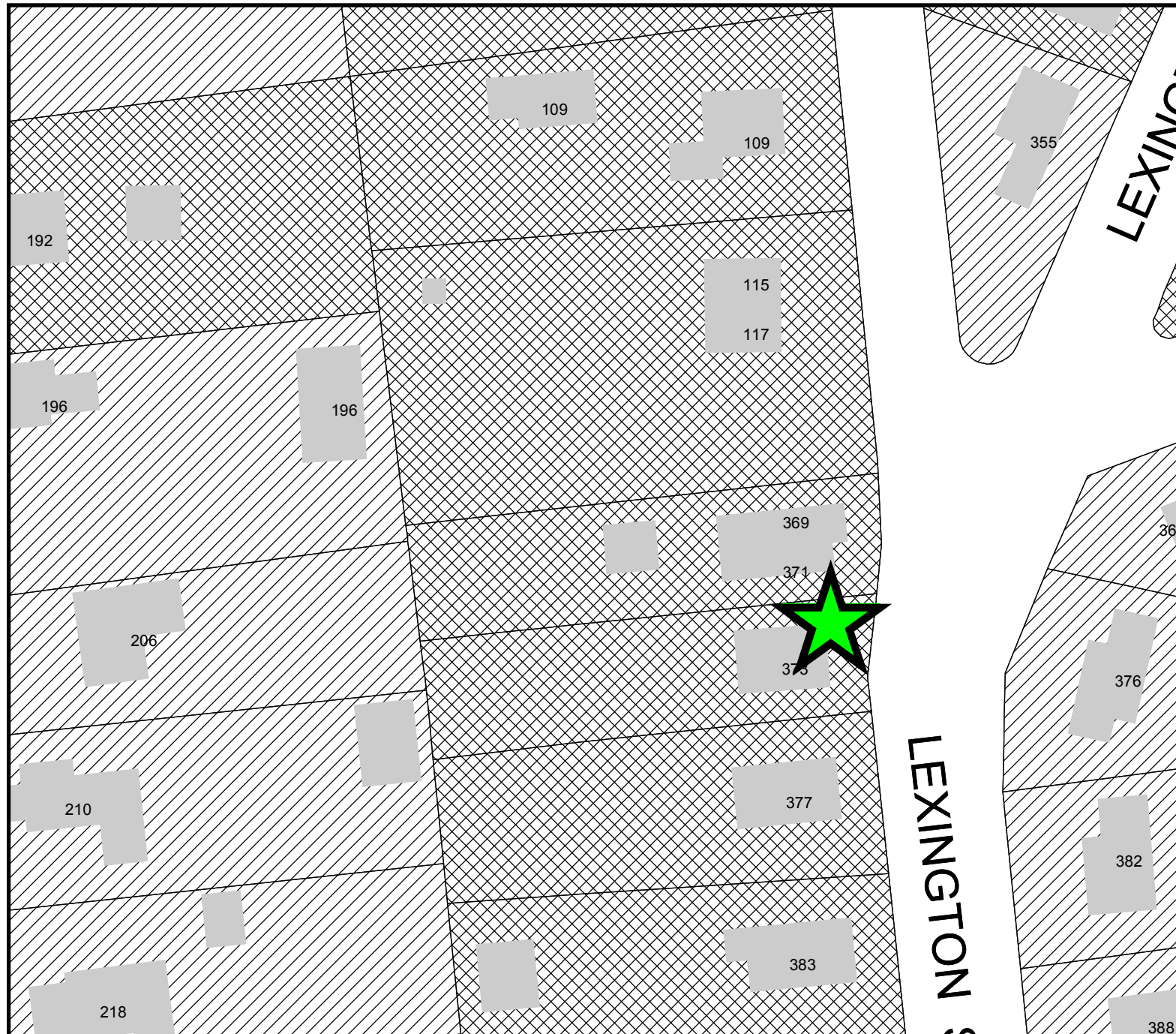
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MAP DATE: January 07, 2011





Attachment "C"

Land Use Map

373 Lexington St.



Legend

-  373 Lexington St.
-  Building Outlines
-  Single Family Residential
-  Multifamily Residential



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MAP DATE: January 07, 2011